

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

PATRICIA BACHUSS

(b) County of Residence of First Listed Plaintiff

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	REAL PROPERTY	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. Section 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

6/15/2010

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 705 Green Ave. N.W., Russellville, AL 25653

Address of Defendant: 507 Prudential Road, Hursham, PA 19044

Place of Accident, Incident or Transaction: 705 Green Ave, N.W. Russellville, AL 25653
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C § 1692

(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Ther Kimmel, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☐ Relief other than monetary damages is sought.

DATE: 6/15/2010 Craig Ther Kimmel
Attorney-at-Law

57100
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 6/15/2010 Craig Ther Kimmel
Attorney-at-Law

57100
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Patricia Bachuss

v.

NCO Financial Systems, Inc.

CIVIL ACTION

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

6/15/2010
Date

Craig Ther Kimmel
Attorney-at-law

Patricia Bachuss
Attorney for

(215) 540-8888

800-863-1689

kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

1
2
3 **UNITED STATES DISTRICT COURT**
4 **FOR THE**
5 **EASTERN DISTRICT OF PENNSYLVANIA**

6 PATRICIA BACHUSS,
7 Plaintiff

8 v.

9 NCO FINANCIAL SYSTEMS, INC.,
10 Defendant

Civil Action No.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

(Unlawful Debt Collection Practices)

11
12 **COMPLAINT**

13 PATRICIA BACHUSS ("Plaintiff"), by her attorneys, KIMMEL &
14 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS,
15 INC. ("Defendant"):

16 **INTRODUCTION**

17 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices
18 Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

19
20 **JURISDICTION AND VENUE**

21 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
22 which states that such actions may be brought and heard before "any appropriate
23 United States district court without regard to the amount in controversy," and 28
24 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
25 under the laws of the United States.

1 provides for specific consumer rights. 15 U.S.C. § 1692k. The operative
2 provisions of the FDCPA declare certain rights to be provided to or claimed by
3 debtors, forbid deceitful and misleading practices, prohibit harassing and abusive
4 tactics, and proscribe unfair or unconscionable conduct, both generally and in a
5 specific list of disapproved practices.

6 12. In particular, the FDCPA broadly enumerates several practices
7 considered contrary to its stated purpose, and forbids debt collectors from taking
8 such action. The substantive heart of the FDCPA lies in three broad prohibitions.
9 First, a “debt collector may not engage in any conduct the natural consequence of
10 which is to harass, oppress, or abuse any person in connection with the collection
11 of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false,
12 deceptive, or misleading representation or means in connection with the collection
13 of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair
14 or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §
15 1692f. The FDCPA is designed to protect consumers from unscrupulous
16 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
17 unconscionable collection methods, conduct which harasses, oppresses or abuses
18 any debtor, and any false, deceptive or misleading statements in connection with
19 the collection of a debt.

20 13. In enacting the FDCPA, the United States Congress found that
21 “[t]here is abundant evidence of the use of abusive, deceptive, and unfair debt
22 collection practices by many debt collectors,” which “contribute to the number of
23 personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of
24 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
25

1 laws and procedures for redressing debt collection injuries to be inadequate to
2 protect consumers. 15 U.S.C. § 1692b.

3 14. Congress enacted the FDCPA to regulate the collection of consumer
4 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
5 abusive debt collection practices by debt collectors, to insure that debt collectors
6 who refrain from using abusive debt collection practices are not competitively
7 disadvantaged, and to promote consistent State action to protect consumers against
8 debt collection abuses.” 15 U.S.C. § 1692e.

9
10 **FACTUAL ALLEGATIONS**

11 15. Defendant and others it retained began in January 2010 constantly and
12 continuously placing harassing and abusive collection calls to Plaintiff seeking and
13 demanding payment for an alleged consumer debt of another person, specifically a
14 Jo Spencer (a/k/a Rosiland Spencer).

15 16. Upon information and belief, the alleged debt Defendant was seeking
16 to collect arose out of transactions which were primarily for personal, family, or
17 household purposes.

18 17. Defendant and others it retained placed calls to Plaintiff’s home
19 telephone.

20 18. Defendant identified the debtor as Jo Spencer (“Ms. Spencer”).

21 19. Plaintiff spoke with Defendant and others it retained on numerous
22 occasions to advise that Ms. Spencer did not live with her, that she did not know a
23 “Jo Spencer”, and not to call her anymore.

24 20. In its conversations with Plaintiff, Defendant disclosed that it was
25 attempting to contact Ms. Spencer regarding a credit card debt.

21. Defendant informed Plaintiff that they needed to get in touch with Ms. Spencer about an American Express bill.

22. Each time Defendant contacted her, Plaintiff instructed Defendant to stop calling her.

23. However, Defendant continued to ignore Plaintiff's instructions and continued to contact her.

24. Defendant's repetitive calls to Plaintiff about a debt of another person were harassing, an invasion of privacy, and entirely unnecessary.

CONSTRUCTION OF APPLICABLE LAW

25. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

26. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

27. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude which includes the ignorant, the unthinking, and the credulous, and the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it ensures protection of all consumers, even naive and trusting, against deceptive collection practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at 1318.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES
ACT

28. In its actions and methods to collect the alleged debt, Defendant violated the FDCPA in the following ways:

- a. Defendant violated of the FDCPA generally.
- b. Defendant violated § 1692b(2) of the FDCPA by informing Plaintiff that Ms. Spencer owed a debt.
- c. Defendant violated § 1692(b)(3) of the FDCPA by calling Plaintiff more than once in connection for the collection of a debt for another individual.
- d. Defendant violated § 1692c(b) of the FDCPA by communicating

1 with Plaintiff about a debt allegedly owed by Mr. Spencer.

2 e. Defendant violated § 1692d of the FDCPA by harassing Plaintiff
3 in connection with the collection of an alleged debt.

4 f. Defendant violated §1692d(5) of the FDCPA by causing a
5 telephone to ring and engaging Plaintiff in telephone conversations
6 repeatedly and continuously with the intent to annoy, abuse, and
7 harass Plaintiff.

8 g. Defendant violated §1692e of the FDCPA by using false,
9 misleading or deceptive representations or means in connection
10 with the collection of a debt.

11 h. Defendant violated §1692e(10) of the FDCPA by using false or
12 deceptive means to collect or attempt to collect a debt or to obtain
13 information concerning a consumer.

14 i. Defendant violated § 1692f of the FDCPA by using unfair and
15 unconscionable means with Plaintiff to collect or attempt to collect
16 a debt.

17 29. As a result of the above violations of the FDCPA, Defendant is liable
18 to Plaintiff in the sum of Plaintiff's actual damages, statutory damages, and
19 attorney's fees and costs.

20 WHEREFORE, Plaintiff, PATRICIA BACHUSS, respectfully prays for a
21 judgment as follows:

22 a. All actual compensatory damages suffered pursuant to 15
23 U.S.C. § 1692k(a)(1);
24
25

- 1 b. Statutory damages of \$1,000.00 for each violation of the
2 FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);
3
4 c. All reasonable attorneys' fees, witness fees, court costs and
5 other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.
6 § 1693k(a)(3); and
7
8 d. Any other relief deemed appropriate by this Honorable Court.

9
10 **DEMAND FOR JURY TRIAL**

11 PLEASE TAKE NOTICE that Plaintiff, PATRICIA BACHUSS, demands a
12 jury trial in this case.

13
14
15
16
17 DATED: June 15, 2010

 RESPECTFULLY SUBMITTED,

 KIMMEL & SILVERMAN, P.C..

18 By: /s/ Craig Thor Kimmel

 Craig Thor Kimmel

19 Attorney ID # 57100

20 Kimmel & Silverman, P.C.

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